UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/741,986	12/20/2000	David A. Eatough	10559/376001/P10182	8003

20985 7590 03/31/2006

FISH & RICHARDSON, PC
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

EXAMINER	
YIGDALL, MICHAEL J	

ART UNIT	PAPER NUMBER
2192	

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/741,986	**Applicant(s)** EATOUGH ET AL.	
	Examiner Michael J. Yigdall	**Art Unit** 2192	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the ~~proposed amendment(s)~~ remarks: a) ☐ will not be entered, or b) ☒ will be entered ~~and an explanation of how the new or amended claims would be rejected is provided below or appended~~.

   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-28*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11.

Applicant's arguments have been fully considered but they are not persuasive.

Applicant contends that the software package of Foster cannot be equated with both the claimed software package received by the package importer and the claimed X-package created by the package importer (remarks, page 3, first full paragraph).

However, as presented in the final Office action, it is the software package of Foster in view of Davis that is equated with the claimed X-package. Foster discloses creating a software package (an "X-package") in preparation for later distribution and installation (see, for example, column 3, lines 47-52 and column 12, lines 25-35). Foster does not expressly disclose that the X-package is created after a package importer first receives another software package. Davis, however, suggests such a package importer in terms of "importing" a third-party package for later installation (see, for example, column 3, lines 44-51 and column 4, lines 1-9). The third-party package of Davis is thus equated with the claimed software package received by the package importer, and Foster in view of Davis thus teaches the claimed X-package created by the package importer.

Applicant further contends that the importation of data in Davis cannot be considered importation of a software package for later software distribution and installation (remarks, pages 3-4, bridging paragraph).

However, Davis imports that data from a third-party package, or as Applicant notes, from "an already obtained software package" (remarks, pages 3-4, bridging paragraph). In Davis, the importation of the third-party software package is done in preparation for later installation, as noted above, and when incorporated into Foster, it is done in preparation for later distribution and installation, as also noted above.

Applicant contends that Foster does not describe a format that makes the X-package manageable in a software package management system independent of vendor-specific aspects of a software package, and that in this regard, Foster's common set of attributes are attributes of the software package, not of an X-package created after the software package (remarks, page 4, last paragraph).

However, again, the software package that Foster creates in view of Davis is considered the X-package, and thus the attributes of that software package are considered the attributes of the X-package. The attributes are included in a control file in a format common to every X-package (see, for example, FIG. 2 and column 7, lines 35-45). Here, part of the "format" is a plain text file that includes one attribute per line in the form of FIELD='value.' Foster discloses that the X-package is manageable in a system that installs, upgrades or removes the X-package's software (see, for example, FIG. 3 and column 8, line 58 to column 9, line 15). Moreover, in Davis, the third-party software package is imported to make it manageable in a system that installs the software independently of any installation systems specific to the third-party vendor (see, for example, column 1, lines 22-34 and 43-57).

Applicant suggests that the common installation interface of Davis "could be generated using software that is specifically programmed for each different vendor," and that there is no implication that it "necessarily uses a format that makes a package manageable" in the system (remarks, pages 5-6, bridging paragraph).

However, in Davis, the "format" that makes the package manageable is a list of installation tasks in some format that the task manager understands (see, for example, column 4, lines 20-23). Regardless of how it is generated, the format is an abstraction of the configuration file that is otherwise specific to the third-party vendor (see, for example, FIG. 3 and column 3, lines 44-51).

As presented in the final Office action, the claims recite only that the "format" of the X-package is one "that makes said X-package manageable in a software package management system independent of vendor-specific aspects of the at least one software package." No other limitations on the format, such as Applicant's suggestion of XML (remarks, pages 5-6, bridging paragraph), are recited in the plain language of the claims. Similarly, with regard to Applicant's description of the invention (remarks, pages 6-7), limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181 26 USPQ2d 1057 (Fed. Cir. 1993).

MY

Chameli C. Das

CHAMELI C. DAS
PRIMARY EXAMINER

3/29/06.